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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,303	09/26/2003	Daniel J. Martin	3882/6AUS	4449

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EXAMINER

PHAM, BRENDA H

ART UNIT	PAPER NUMBER
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2616

MAIL DATE	DELIVERY MODE
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02/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/672,303	MARTIN, DANIEL J.	
	Examiner	Art Unit	
	Brenda Pham	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-17 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14 is/are allowed.
- 6) ☒ Claim(s) 2-6, 8 and 15 is/are rejected.
- 7) ☐ Claim(s) 7, 9-11, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/08/2004; 10/01/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 2-17 are pending in the application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 2-6, 8 and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-22 of U.S. Patent No. (US 6,744,739 B2)

Claims 2, (US 6,744,739 B2) a method for determining a topology of a network, the method comprising:

communicating with a first router in the network;

querying a first link state database of the first router for first type 1 and type 2 link state advertisements in a first area; and

importing the type 1 and type 2 link state advertisements into a network topology information database (claim 16)

Regarding claim 3, query the first router for a router identifier; and

determining a number of areas connected to the first router (claim 17 (a)).

Regarding claim 4, importing into the network topology information database additional topology information for all network directly connected to the first router (claim 17, (d)).

Regarding claim 5, query the first link state database for each respective area connected to the first router to determine respective Type 1 and Type 2 link advertisements for the respective area; and importing into the network topology information database, the respective Type 1 and Type 2 link state advertisements (claim 22).

Regarding claim 6, sweeping all networks in the first area announced by the first router and which made Type 3, Type 4 and Type 5 or Type 7 announcements (claim 27).

Regarding claim 8, sweeping all networks in the first area announced by the first router and which do not make Type 3, Type 4, Type 5 or Type 7 announcements.

Regarding claim 15, (US 6,744,739 B2) claims a method for determining a topology of a network, the method comprising:

- communicating with a first router in the network;

- querying a first link state database of the first router for first Type 1 and Type 2 link state advertisements in a first area;

- importing the first Type 1 and Type 2 link state advertisements into a first network topology information database;

- querying the first router for a first area identifier;

- determining whether the first router is an area border router based on the first area identifier; and

- when the first router is an area border router, querying the first router for other areas bordered by the first router, and

- importing topologies of the networks in the other areas into the network topology information database (claim 18-22).

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 2-6, 8 and 15 of the application encompass the patented invention of claims 1-22 of Patent No. US 6,744,739 B2).

Allowable Subject Matter

4. Claims 7, 9-11, 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 12-14 are allowed over prior arts made of record.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Troxel et al (US 6,850,524 B1) discloses system and methods for predictive routing.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Pham whose telephone number is (571) 272-3135. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn D. Feild, can be reached on (571) 272-2092.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

January 28, 2008
Brenda Pham

Brenda A Pham

**BRENDA PHAM
PRIMARY EXAMINER**